

Letter of Findings Number: 04-20120416
Sales and Use Tax
For Tax Year 2012

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ISSUE

I. Sales and Use Tax—Aircraft Based in Indiana.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests the imposition of use tax on the purchase of an airplane.

STATEMENT OF FACTS

Taxpayer is an out-of-state corporation with operations in Indiana. As the result of a records cross-check with the Federal Aviation Administration ("FAA"), the Indiana Department of Revenue ("Department") learned that Taxpayer had purchased an aircraft but had not paid sales tax to Indiana. The Department reviewed its records and found that Taxpayer had not paid Indiana sales tax on the purchase of the aircraft. The Department therefore issued a proposed assessment for use tax. Taxpayer protests the imposition of Indiana use tax on the grounds that the aircraft was purchased in another state and that it has been in that state ever since without ever entering Indiana. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Sales and Use Tax—Aircraft Based in Indiana.

DISCUSSION

Taxpayer protests the imposition of Indiana use tax. The Department based its proposed assessments on the information received from the FAA which stated that the Taxpayer was the registered owner of the aircraft. That report also stated that Taxpayer's address was in Indiana. The Department therefore determined that the aircraft was in Indiana but had not had sales tax paid on the purchase. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Taxpayer states that the previous owner of the aircraft had flown from his home base in Arizona and into California. Along the way, the engine failed and the aircraft crash-landed. It was towed to an airport in California where it has been ever since. Taxpayer states that it purchased the aircraft in 2012 with the intention of either making it airworthy again or, if repairs are not feasible, selling the parts. In any event, the aircraft has never been in Indiana.

The sales tax is imposed by IC § 6-2.5-2-1, which states:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

(a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayer had acquired tangible personal property in a retail transaction and used that property in Indiana without paying sales tax at the point of purchase. The Department therefore issued proposed assessments for use tax, as provided by [45 IAC 2.2-3-4](#).

As a result of the protest process, Taxpayer was able to provide documentation in support of its position that the aircraft has not left California since its crash. Since the aircraft never entered Indiana, Taxpayer never used the aircraft here. Therefore, Indiana use tax is not due. Taxpayer has met the burden of proving the proposed assessment wrong, as required under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

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